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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,375	02/12/2007	Hideaki Tateishi	09-164-US	6219
718	7590	12/27/2010		
REED SMITH LLP			EXAMINER	
P.O. BOX 488			MARX, IRENE	
PITTSBURGH, PA 15230-0488			ART UNIT	PAPER NUMBER
			1651	
NOTIFICATION DATE	DELIVERY MODE			
12/27/2010	ELECTRONIC			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[ptoipinbox@reedsmith.com](mailto:ptoipinbox@reedsmith.com)

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Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the amendments to claim 1, including new issues under 35 U.S.C § 101.

**Response to Arguments**

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see **37 CFR 1.116**) or reinstate previously canceled claims.

Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under **37 CFR 1.116(b)(3)** is expected in all amendments after final rejection, i.e., " An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented."

Applicant argues that the claimed strain can be distinguished over Marois in that Marois fails to disclose teach or suggest that Talaromyces controls not only soil-borne disease, but also seed-borne disease. However, this is merely a conclusionary statement of counsel. There is no probative evidence on the record to demonstrate that the properties of the Talaromyces strain as claimed are, in fact, different and unobvious over the reference strains.

Therefore the rejection is deemed proper and it is adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/  
Primary Examiner  
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